

Fees, of County Clerk. County Clerk, Fees of.

The County Clerk and Recorder is not permitted, under section 3168, revised codes, to allow individuals or corporations desiring to file a large number of similar deeds to supply the books therefor and deduct from the regular fees of the clerk and recorder the amount which would be charged for the printed matter supplied by private persons.

Helena, Montana, September 8, 1909.

Hon. O. D. Gay,
County Attorney,
Chouteau, Montana.

Dear Sir:

I am in receipt of your letter of August 24, 1909, wherein you submit three questions for my official opinion:

1. As to the qualification of an elector at an election to determine the proposition of incorporating a town?
2. The qualification of an elector at the first election held to select officers for said town?

3. As to whether the fees for filing and recording instruments of writing allowed by law to be recorded, as fixed by section 3168, revised codes, is mandatory?

As to the first and second questions which you submit, both have been fully covered by former opinions rendered by this office. I enclose you a copy of the most recent opinion on those questions, addressed to Honorable B. F. Maiden, county attorney, Libby, Montana. This opinion refers at the close to two other opinions, one of which is found in the opinions of attorney general, 1905-06, and one in the bound volume of opinions of attorney general, 1906-08, both of which volumes have been previously sent to your office.

These opinions are in accord with your holding on the first question, but hold that no registration is necessary of the qualified voters at the first election.

In explanation of the third query contained in your letter, you state that a large tract of land is to be settled in Teton county under the Carey Land Act, and that the entrymen will all be given similar agreements, which the water company will have printed in blank form, and that it is the desire of the water company to furnish the county with a blank book containing this form of agreement, on condition that the fee of the county recorder be waived as to the printed matter in these agreements and the prescribed fee charged only for the actual, necessary recording of the words which are filled in the blank spaces.

I advise you that, in my opinion, the county clerk and recorder is not justified in making this agreement with the water company, and would be liable when checking up with the state examiner to be called upon for fees, based upon the folio charge for the entire instrument. If there is any advantage in printing these books, on account of the fact that the printing would be cheaper than the recording fees, it seems that that advantage should accrue to the county.

The county recorder is required, by section 3168, to charge certain prices for each instrument recorded. If he record and charge for only the necessary names and descriptions which are filled in in books furnished by some one else, could it be said that the entire instrument was recorded and might not that question be raised by some of the grantees who might desire the entire instrument recorded? Evidently the object of section 3168 is to assist in defraying the expenses of the county clerk and recorder's office, and I am not able to find any authority for reducing the legal fees. An individual or corporation who might have, during a certain stated period, a great deal of recording to do might offer to pay the salary of a clerk whose entire time during that stated period would be devoted to the recording of its instruments alone, and if a sufficient number of instruments were furnished by this individual or corporation a great saving would result to him. But this would be without authority of law and in direct opposition to the theory and purpose of the fee system.

I therefore advise you that these blank books should be printed at the county expense and the regular fees charged for recording instruments.

This question submitted by you is entirely different from the procedure followed by members of water users associations, the law establishing which provides that the blank forms shall be provided by the association, the form of which to be prepared by the attorney general.

Yours very truly,

ALBERT J. GALEN,

Attorney General.